

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

| | |
|--|--|
| AUSTIN LEE CHIPPS SR., Plaintiff, vs. UNITED STATES OF AMERICA, Defendant. | 5:22-CV-05077-RAL ORDER GRANTING DEFENDANT'S MOTION TO DISMISS |
|--|--|

On October 14, 2022, Defendant filed a Motion to Dismiss and Brief in Support of Motion to Dismiss. Docs. 7, 8. The Plaintiff, Austin Lee Chipps Sr., failed to respond. This Court then allowed Plaintiff until January 18, 2023, to file a response to the motion, warning that if he failed to do so, the Motion to Dismiss would likely be granted. Doc. 9. The Plaintiff still failed to respond despite the additional time given to do so.

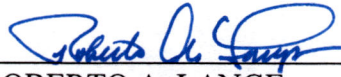
Defendant's motion and memorandum points out that the Plaintiff's filing was not timely. Doc. 7; Doc. 8 at 3. Chipps was sentenced on July 6, 2018, and did not appeal. Docs. 61–62, in 5:17-CR-50077-JLV. Chipps filed his § 2255 petition on September 2, 2022. Doc. 1. As such, his motion is untimely and should be dismissed because it was filed more than one year after his conviction became final and because any argument that could have been based on the Supreme Court's opinion United States v. Davis, 139 S. Ct. 2319 (2019), would have had to have been filed by June 24, 2020, to have been timely. 28 U.S.C. § 2255(f)(3); see also Dodd v. United States, 545 U.S. 353, 357–58 (2005); United States v. Spencer, No. 14CR3221SRNTNL, 2021 WL

5644347, at *4 (D. Minn. Dec. 1, 2021); Bean v. United States, No. 4:20-CV1509-CDP, 2020 WL 6582637, at *2 (E.D. Mo. Nov. 10, 2020). Therefore, it is hereby

ORDERED that Defendant's Motion to Dismiss, Doc. 7, is granted and this matter is dismissed without prejudice.

DATED this 19th day of January, 2023.

BY THE COURT:



ROBERTO A. LANGE
CHIEF JUDGE